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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,131	09/22/2003	Thomas L. Naglich	SET157	8410

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EXAMINER

PRICE, RICHARD THOMAS JR

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 07/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/666,131

Applicant(s)

NAGLICH ET AL.

Examiner

Thomas Price

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-7,11 and 12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11 is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6,7 and 12 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

The finality of the office action mailed on May 20, 2005 is withdrawn, and a new grounds of rejection is attached herewith.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, 6, 7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cook, Sr. et al (US Patent 3,270,368). Cook teaches a fish scaling device which is structurally similar to the Applicant's claimed tool for cracking crabs. More specifically, the apparatus includes a base 10 having a top surface 20, bottom surface 12 and a pair of end edges (unnumbered) and a pair of side edges (unnumbered). The base material is formed of a resin or synthetic plastic material as evidenced by its cross sectional delineations. See Figure 3. A cracking member 26 is positioned within a cracking member storage well 22 which extends into one of said end edges for selectively receiving said cracking member 26. A coupler 42 is attached to said top surface of the base 10 for selectively attaching said cracking member 26 to said base 10 such that said cracking member extends upwardly from said base 10. Regarding claims 1 and 12, it is well known to make handles out of wood, especially before the advent of modern materials such as plastic. Further, plastic and wood materials are considered to be structurally equivalent in the field of tool handles. It

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would have been obvious to a person of ordinary skill in the art at the time the invention was made to use a wood handle(inherently floatable) instead of the plastic handle of Cook, in that, wood is believed to be equivalent material to plastic. In regards to claim 2, Cook does not discuss the specific dimensions as claimed by the Applicant, however, these dimensions are considered to be a matter of size which does not patentably distinguish the claimed invention over the prior art of record. Therefore, the dimensions as claimed in claim 2, are believed to be obvious to a person of ordinary skill in the art at the time the invention was made. Regarding claim 4, the cracking member 26 of Cook is in the shape of a plate and includes an upper edge and a lower edge. A flange 38 is attached to and extends along a length of said lower edge. See Figure 3. The flange 38 is oriented generally perpendicular to a plane(non-specific) of said plate. Further, the flange 38 includes an oppositely positioned edge extending in opposite directions with respect to said plane of said plate. As for claims 6 and 7, the finger lands and grooves 14 and 16 are considered to broadly read on a plurality of feet attached to said bottom surface and each generally extend between said end edges of said base.

Allowable Subject Matter

Claim5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 11 is allowed.

Conclusion

Claims 1, 2, 4, 6, 7 and 12 are rejected, while claim 5 is objected to. Claim 11 is allowable over the prior art of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Price whose telephone number is 703-308-2694. The examiner can normally be reached on Monday through Friday from 8:30a.m. to 5:00p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Thomas Price
Primary Examiner GAU: 3643

rtp